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June 20, 1994

VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20036

Re: GN Docket No. 93-252
Comments on the Further Notice of Proposed Rulemaking
American Mobile Telecommunications Association, Inc.

Dear Mr. Caton:

On behalf of the American Mobile Telecommunications Association, Inc., enclosed herewith please find its Comments on the Further Notice of Proposed Rulemaking, GN Docket No. 93-252.

Kindly refer any questions or correspondence to the undersigned.

Very truly yours,

Elizabeth R. Sachs

ERS:cls

Enclosure

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Sections 3(n) and 332 of the Communications Act	)	GN Docket No. 93-252
	)	
	)	
Regulatory Treatment of Mobile Services	)	
	)	

To: The Commission

COMMENTS ON THE FURTHER NOTICE OF PROPOSED RULEMAKING

Respectfully submitted,

AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.

By: _____

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June 20, 1994

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SUMMARY

The instant Further Notice of Proposed Rule Making seeks to determine which heretofore Part 90 systems should be considered substantially similar to competitive common carrier services, and to what extent the existing Part 90 rules should be revised to reconcile the technical and operational requirements applicable to these reclassified CMRS services. The Notice also proposes the establishment of a 40 MHz CMRS spectrum cap, and investigates the geographic areas and attribution standards which might be appropriate under such an approach. Finally, the Notice considers various licensing rules and procedures mandated by Title III of the Communications Act which will be applicable to reclassified CMRS licensees.

AMTA supports the FCC's efforts to establish regulatory symmetry among providers of substantially similar services, consistent with last year's Congressional directive. Adoption of reasonably consistent regulatory approaches for comparable service offerings should enhance the opportunities for vigorous competition in the already highly competitive wireless marketplace.

The Association suggests that the majority of reclassified Part 90 services do not appear to have a common carrier counterpart. In the Association's opinion, the traditional 800 MHz SMR, the 900 MHz SMR, and the 220 MHz commercial system are not substantially similar to any common carrier offering. Thus, the FCC can exercise substantial flexibility in crafting rules appropriate for the optimal development of these services within the broader CMRS industry. AMTA does recommend that the FCC eliminate both system loading requirements and the related forty-mile rule as no longer necessary to promote competition in the 800 MHz and 900 MHz SMR services.

AMTA acknowledges that so-called wide-area SMRs have the potential to provide a service substantially similar to cellular if the regulatory structure can be modified to permit geographic licensing and an opportunity to aggregate clear, preferably contiguous spectrum. The Association notes, however, that the current SMR licensing scheme permits neither, leaving these systems at a considerable competitive disadvantage to cellular. AMTA intends to work with the FCC and the industry to develop a more workable approach, one which balances the interests of all segments of the SMR community.

The Association opposes the CMRS spectrum cap as both unnecessary and administratively complex. AMTA suggests that the Commission will better ensure a healthy marketplace by continuing to monitor ownership activity on a service-by-service basis. If the FCC elects to adopt a cap, then AMTA argues that it must also develop a formula by which it can compare on an equitable basis the distinctly non-fungible spectrum capacity available to various types of systems. It also questions the

Commission's practical ability to evaluate the attribution standards proposed in relation to authorizations which are not geographically contiguous. Finally, it suggests adoption of a substantially higher attribution level so that capital remains available for the development of innovative service offerings.

The Association also recommends certain modifications in the proposed licensing rules and procedures, consistent with the statutory requirements set out in Title III of the Communications Act.

1. The American Mobile Telecommunications Association, Inc. ("AMTA" or "Association"), in accordance with Section 1.415 of the Federal Communications Commission ("FCC" or "Commission") Rules and Regulations, 47 C.F.R. § 1.415, respectfully submits its Comments in the above-entitled proceeding.[1/] The instant Notice follows the FCC's earlier decision in this same proceeding in which the agency established the basic regulatory framework for the Commercial Mobile Radio Service ("CMRS"), consistent with the Congressional mandate articulated in the Omnibus Budget Reconciliation Act of 1993.[2/] Having determined that certain heretofore Private Land Mobile services, regulated under Part 90 of the FCC's Rules, 47 C.F.R. § 90.1 et seq., should be reclassified as CMRS, the Commission is now proposing changes to the technical and operational rules governing those services necessary to establish comparable regulatory schemes for those services which are deemed to be "substantially similar" to common carrier services which operate pursuant to a different structure.

2. AMTA supports the Congressionally-mandated concept of regulatory symmetry. The Association is confident that the public will benefit from enhanced competition if functionally equivalent services are provided on a level regulatory playing field. It anticipates working closely with the FCC in formulating rules which will enable substantially similar CMRS services to compete actively and effectively in the burgeoning

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[1/] Further Notice of Proposed Rule Making, GN Docket No. 93-252 (adopted April 20, 1994, and released May 20, 1994) ("FNPR" or "Notice").

[2/] Second Report and Order, GN Docket No. 93-252, 9 FCC Rcd 1411 (1994) ("2nd R&O").

wireless marketplace.

3. However, AMTA, like the FCC, also recognizes that not all CMRS services are, or ever will be, substantially similar to a particular common carrier counterpart. As described below, some previously private services were not intended to and are not anticipated to function in a fashion comparable to any common carrier offering. Others have the potential to provide functionally equivalent services, but have not yet achieved market power sufficient to claim substantial similarity from either a regulatory or customer perspective. Thus, the FCC has properly categorized this proceeding as "transitional." The decisions reached herein will establish the framework, if not the full panoply of rules, that will govern these services into the next century. As such, it is a seminal and vitally important proceeding.

I. INTRODUCTION

4. AMTA is a nationwide, non-profit trade association dedicated to the interests of what heretofore had been classified as the private carrier industry. The Association's members include trunked and conventional 800 MHz and 900 MHz SMR operators, licensees of wide-area SMR systems, and commercial licensees in the 220 MHz band. These members provide commercial wireless services throughout the country, and represent the substantial majority of those private carriers whose systems have been reclassified as CMRS.

5. The Association participated actively in the legislative debate which resulted in the Budget Act, as well as in the earlier stages of this proceeding. From the outset, AMTA supported adoption of a statutory and regulatory structure which would

permit a more symmetrical approach to regulating systems providing functionally equivalent services. The concept of a "level playing field" is one which has served the public well since it promotes full and fair competition.

6. At the same time, however, AMTA is fully cognizant of the practical difficulties of achieving this laudable objective. The Commission does not have the luxury of designing on a blank slate cohesive regulatory schemes for services which may be viewed as substantially similar. The basic regulatory structure within which the services under consideration operate is already established in certain unalterable respects: the amount of spectrum in the allocation and the eligible entities among which that spectrum is shared. These are the real world parameters within which the FCC and interested parties must work in attempting to craft a more "service neutral" approach. The task is formidable, but it is one in which the Association has a profound interest.

II. BACKGROUND

7. The FNPR describes in detail the genesis of this proceeding. The Commission has already responded to the Congressional directive to reclassify land mobile systems based on a CMRS versus PMRS (Private Mobile Radio Service) delineation rather than the previous private versus common carrier distinction.[3/] In the 2nd R&O, the FCC determined that SMR, 220 MHz, Private Carrier Paging, and Business Radio systems are permitted by FCC rule to provide services which would be

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[3/] Congress provided a three-year transition period for heretofore private systems that would be reclassified as CMRS. The FCC subsequently determined in the 2nd R&O that the transition period would be available to those already authorized in a particular service as of the date of the legislation.

classified as CMRS; that is, they are eligible to offer for-profit, interconnected service to the public.[4/] Congress further required the FCC to modify its rules governing the Private Radio Services to implement the CMRS-related amendments to the Act. The agency was directed to ensure that private land mobile licensees reclassified as CMRS will be subject to technical requirements comparable to those governing providers of "substantially similar" common carrier services. The statutory deadline for doing so was one year, or by August 10, 1994.

8. The instant FNPR seeks comment on what is meant by substantially similar services. It asks how best to ensure that the technical and operational rules for private systems reclassified as CMRS are comparable to those applicable to common carriers providing substantially similar services. It questions whether a spectrum cap should be imposed on the amount of CMRS spectrum that may be aggregated by an entity within a given geographic area. Finally, it proposes modified licensing rules for CMRS services consistent with the statutory requirements for Title III common carrier licensing.

9. The Notice addresses these subjects on an issue-by-issue basis. The Association's Comments take a somewhat different approach. Certain of the broader issues such as what constitutes substantial similarity, a proposed CMRS spectrum cap, and matters relating to generic issues regarding licensing and certain operational rules are addressed generally. However, service specific matters addressing channel assignment and service areas, loading requirements, and certain specific licensing regulations are

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[4/] AMTA disagrees with the scope of the FCC's CMRS definition, and has urged that the Commission adopt a narrower interpretation. See AMTA Petition for Reconsideration, GN Docket No. 93-252, filed May 19, 1994

considered on a service-by-service basis. An integrated analysis of these highly interrelated issues, as they apply to the traditional SMR, the wide-area SMR, the 900 MHz SMR, and the 220 MHz commercial operator, has enabled the Association to delineate more clearly the distinctions among these various components of the industry.

10. Even then, the Association is not confident that the FCC will be able to determine every aspect of the revised Part 90 rule structure within the timeframe established by Congress. The instant Notice raises detailed questions about virtually every aspect of the previously private carrier regulatory scheme. Consideration of each of these matters and adoption of revised regulations may require further analysis on the part of the FCC and the industry. The Association is confident, however, that the policy decisions which will establish the framework within such regulations must function can be resolved by the Congressionally-established deadline.

11. AMTA is pleased to participate in this proceeding. The rules adopted herein will guide the development of these vital segments of the broader wireless, or CMRS, marketplace. To the extent that the FCC is able to level the playing field among currently and prospectively competitive services, AMTA's members can be expected to be active, successful participants in that market to the benefit of the wireless communications-using public. It is imperative, however, that the regulatory scheme adopted also recognize key distinctions in otherwise substantially similar services. In particular, AMTA urges the Commission to adopt rules which will encourage the growth of truly competitive, functionally equivalent services by recognizing the relative market power of systems in various stages of CMRS development. A properly nurturing

regulatory scheme will enable more embryonic services to achieve sufficient market penetration to foster the genuinely competitive environment sought by the FCC, the administration, the CMRS industry, and, most importantly, the American public.

III. SUBSTANTIAL SIMILARITY

12. The predicate for the instant proceeding is that certain reclassified private systems are "substantially similar" to common carrier services, but operate under a different, inconsistent regulatory scheme. Therefore, the FCC first requests comments on the factors which should be considered in evaluating substantial similarity. It suggests that systems competing to provide similar services to customers would be assumed to satisfy that requirement. It then queries whether the FCC should focus on the way CMRS services are marketed to customers or examine whether customers are actually selecting among various services as the critical factor. FNPR ¶ 13-4.

13. AMTA agrees that the FCC should consider the perceived substitutability of the service provided from the customer's perspective in evaluating which systems should be classified as substantially similar. Customer perception is a highly significant factor in determining actual system fungibility. However, the FCC should also consider objective factors such as allocation size and frequency assignment plan in reaching its determination. There are practical limitations on the ability of even the most aggressively entrepreneurial operator to market a service which is relatively constrained by system size or coverage vis a vis seeming competitors. Those limitations should be reflected in the regulatory approaches adopted by the Commission.

IV. TECHNICAL AND OPERATIONAL RULES

14. As noted above, there are certain technical and operational rules whose applicability cuts across service lines. These matters are addressed herein, except to the extent that specific proposals are included in the service-by-service analyses.

15. The Association has not identified a need to modify the current Part 90 requirements regarding emission masks, modulation and emission requirements, co-channel separation criteria, or equipment interoperability.[5/] The existing rules do not appear to inhibit in any way the ability of these reclassified CMRS providers to participate on a competitive basis in the general CMRS marketplace. The same is true for power and antenna height limitations. The FCC should take this opportunity to delete rule Section 90.477(b), 47 C.F.R. § 90.477(b), which is no longer statutorily required.

16. AMTA also supports the Commission's proposal to extend to twelve months the construction period for all CMRS licensees, except those that qualify for extended implementation, as described below. FNPR ¶ 62. Although the Association believes that a shorter period might be reasonable in instances where equipment is easily obtainable and system implementation not complex, the simplicity and ease of administration of establishing a common construction requirement for all CMRS systems outweigh those individual considerations. Thus, AMTA endorses the FCC's proposal to extend the conventional SMR construction deadline from eight months to one year. It accepts the recommendation that CMRS licensees not only construct, but also

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[5/] In fact, mandatory interoperability might have foreclosed RAM Mobile Data USA Limited Partnership and Geotek Communications, Inc. from introducing their innovative technical approaches to the SMR industry.

commence service to the public, within that period, as well as the definition of service commencement which would require the provision of service to at least two third parties unaffiliated with the licensee. FNPR ¶ 63.

17. AMTA has reviewed, and recommends no changes in the Part 90 rules regarding user eligibility, permissible uses, station identification or general licensee obligations, except as to the identification of wide-area SMR systems as detailed below. Additionally, the Association recommends application of the current exemption from EEO filing requirements for licensees with fewer than sixteen employees. FNPR ¶ 85. That delineation should not impose burdensome recordkeeping and reporting requirements on small businesses reclassified as CMRS.

V. 800 MHz SMR SERVICE

A. Substantial Similarity

18. The FCC has tentatively determined that wide-area SMR service is (AMTA would argue, more accurately, will be) substantially similar to cellular service. FNPR ¶ 15. It also suggests that local conventional or trunked SMR systems which offer only limited interconnected service on an ancillary basis to dispatch may not be comparable to either of these more geographically expansive offerings. FNPR ¶ 16. The Commission notes that the interconnected service provided on such systems may be distinguishable by virtue of its geographic range, its channel capacity and/or its technical quality. Id.

19. AMTA agrees with this assessment. The type of SMR system designated as wide-area in the FNPR typically proposes to provide multi-site coverage employing

frequency reuse and digital technology over a broad geographic region.[6/] These systems are expected to utilize the expanded capacity derived from digital technology and frequency reuse to increase their interconnection capabilities, thereby more closely approximating a cellular service.

20. By contrast, the "traditional" SMR providers contemplated in the Notice generally has limited spectrum available at any given site, and does not operate even commonly owned or managed systems in a geographic area on a fully integrated basis. Customers may "roam" from one system to another, but that roaming is not seamless and typically requires customer involvement to accomplish. Its operations do not approximate the service provided by a cellular system, even when substantially interconnected as is often the case in more rural areas.

21. Additionally, there are certain SMR systems which do not fit neatly within either category described in the Notice, and which would not be considered substantially similar to a cellular offering. For example, Geotek Communications, Inc. states that it intends to offer a multichannel SMR service across broad geographic areas, but with an emphasis on the provision of traditional dispatch service to business users. It proposes to employ a single high-power transmitter rather than a low-power and height cellular-like system configuration. While it might opt for a more streamlined, geographically-defined license instrument, it would be disadvantaged by application of certain technical and operational rules suited to a cellular-type operating environment.

[6/] See, e.g., Fleet Call, Inc. Memorandum Opinion and Order, 6 FCC Rcd 1533, recon. dismissed, 6 FCC Rcd 6989 (1991), Notice of Proposed Rule Making, PR Docket No. 93-144, 8 FCC Rcd 3950 (1993) ("EMSP Notice").

22. Thus, the Commission was correct in its tentative determination that providers of these services should not be classified as operating systems which are substantially similar to cellular. In fact, AMTA is not able to identify any common carrier service to which traditional SMR can properly be compared.[7/]

23. Thus, AMTA recommends that the FCC consider traditional SMR as a discrete service with no common carrier counterpart. The rules governing those systems should be tailored to the specific role they serve in the wireless marketplace, without reference to common carrier standards, except to the extent dictated by the Title III statutory requirements.

24. Conversely, having determined that wide-area SMR is substantially similar to cellular service, the Commission must further consider what regulatory changes are appropriate for wide-area SMR services to achieve, to the extent possible, regulatory parity as well. The FCC has already suggested that its analysis in such circumstances would seek comparability in the following respects:

- the traffic capacity of the assigned spectrum (e.g., the number of channels available to licensees);
- the size of the geographic areas in which the similar services are licensed to be provided;
- the height of antennas and the power of transmitters that the

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[7/] The FNPR questions whether IMTS is comparable to, and therefore a useful model for, traditional SMR service. AMTA would suggest that the moribund IMTS service does not provide a useful regulatory model for the robustly successful analog SMR industry.

similar services are authorized to use and the reliable service area of each transmitter;

- the degree of co-channel and adjacent channel interference to which the similar services are subject; and
- other related technical and operational rules affecting the provision of the similar services. FNPR ¶ 24.

B. Technical and Operational Rules

1. Traditional SMR

25. At the outset, the Association wishes to affirm a vital consideration in its evaluation of the myriad, fundamental changes proposed in the instant Notice: The FCC must reasonably balance the interests of traditional and wide-area SMR operators in its movement toward general CMRS regulatory symmetry. A healthy competitive balance must be achieved between these two types of system offerings, as well as between each of them and other CMRS services. Thus, even if traditional SMR is not expected to provide service which is substantially similar to wide-area SMR, much less cellular or broadband PCS, it must be given the regulatory tools needed to maintain a competitive position in the wireless marketplace. AMTA believes that can be accomplished through adoption of the following provisions.

26. AMTA fully supports the Commission's proposal to eliminate both the 40-mile rule and system loading requirements for traditional trunked SMR systems.[8/]

[8/] AMTA is unsure whether the FNPR also proposes to eliminate the loading requirement for conventional 800 MHz SMR systems. If so, the Association is uncertain (continued...)

FNPR ¶ 70-3. The Association has long recommended elimination of the five-year loading requirement which provides for the automatic cancellation of operational, but unloaded channels. 47 C.F.R. § 90.631(b).[9/] Properly constructed facilities should not be susceptible to channel recovery for failure to attract a predetermined, urban-oriented number of units per channel. It is reasonable to assume that all CMRS operators who invest in system implementation and operation have every incentive to provide a service which is desired by prospective customers in their particular area, and to attract as many of those customers as possible. The FCC is correct in its assumption that the marketplace is in the best position to define what type of service that might be, and what level of usage the system should provide. This is particularly true when the Commission has provided for a multiplicity of alternative CMRS providers. FNPR ¶ 86.

27. The Association has also concluded that the benefits of loading requirements and the corollary 40-mile rule for the promotion of diversity of SMR ownership have become outweighed by their disadvantages in an increasingly competitive marketplace. Both requirements were useful regulatory tools for promoting a multiplicity

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[8/](...continued)
how such a scheme would work. Trunked systems are assigned channels on an exclusive basis within a specific geographic area. Under the instant proposal, channels that are properly constructed would not be recoverable for failure to serve a specified number of customers. Frequencies recovered on some other basis would ultimately be assigned to a different licensee. By contrast, conventional frequencies are available on a shared basis. Channels that are less than "fully loaded" are available for assignment to additional licensees. Elimination of a loading requirement for conventional systems would effectively convert them from potentially shared to totally exclusive use. AMTA is not persuaded that such a result would serve the public interest.

[9/] See AMTA Petition for Rule making, RM-8387, filed October 29, 1993, which the FCC has incorporated herein by reference.

of SMR system ownership in the earlier stages of this industry's development. They were largely successful in achieving that objective. Yet the realities of the marketplace also fostered the proliferation of SMR management agreements whereby a single entity could participate in the operation of more than a single unloaded system within a market. These arrangements encouraged the implementation of numerous systems which have served the public well, but they now represent an unnecessary, artificial device responsive to outdated regulatory limitations. The FCC is wise to consider alternative approaches to any concerns regarding SMR spectrum warehousing. FNPR ¶ 70.

28. AMTA has shared the concern regarding spectrum warehousing over the years, and for that reason has been reluctant to recommend elimination of these restrictions. It has now modified its position in light of the multitude of wireless alternatives with far more liberal standards regarding spectrum aggregation, and the scarcity of unassigned 800 MHz SMR spectrum in all but the most underpopulated areas of the country. The Association has become convinced that the existing rules are no longer appropriate, and indeed unreasonably restrict the ability of traditional SMR operators to acquire sufficient spectrum in their preferred system configuration as dictated by customer needs.

29. Further, the Association is not persuaded that the administrative costs for the Commission and the system operators adopting a different standard, such as those suggested in the Notice, are reasonable given the very limited amount of unassigned 800 MHz spectrum remaining. FNPR ¶ 71. A stringent construction enforcement program would ensure that authorized channels have been placed in operation and are serving the

public. Once they are constructed, it is reasonable to assume that the licensee will seek to derive revenue from them by serving as large a customer base as the particular system will support. At this stage of the industry's maturation, that approach might well be sufficient to deter spectrum warehousing. However, the Association is still considering the alternatives outlined in the FNPR, as well as others, to satisfy itself that the proper balance has been achieved between the desire to permit greater licensee flexibility in this area and the need to prevent speculation in spectrum and frequency warehousing.

2. Wide-Area 800 MHz SMR

30. The Commission has tentatively concluded, and AMTA agrees, that wide-area SMR systems will provide a service substantially similar to cellular from the customer's and the competition's perspective. Therefore, the FCC must endeavor to craft technical and operational rules for this service which will ensure that it will not be "regulatorily impaired" in the marketplace.

31. As noted above, the FCC has already outlined those areas that must be addressed when services are deemed to be substantially similar. See ¶ 22, supra. Each of those factors raise complex regulatory issues, the resolution of which will define the development of this burgeoning industry into the next century. AMTA's objective is to identify what it believes to be the optimal regulatory scheme for which broad industry support can be secured, consistent with the timetable in which the FCC must work. In AMTA's opinion, the legislative directive will be satisfied if the FCC is able to establish the overall direction it intends to take on this subject. It does not require finalization of every licensing detail by the statutory deadline.

32. AMTA is committed to adoption of a geographic licensing scheme for wide-area SMR systems. The lack of a defined, geographically-specific authorization is unquestionably a competitive disadvantage vis a vis cellular. The Association anticipates supporting MTA-wide, rather than self-defined, geographic boundaries. In addition, wide-area SMR spectrum cannot be considered functionally equivalent to cellular as long as SMR frequencies are not "clear"; that is, as long as wide-area SMR operators must co-exist with a multiplicity of co-equal, co-channel traditional SMR facilities scattered throughout their operating area. Under these circumstances, which exist today, an 800 MHz SMR frequency is not fully equivalent to a cellular channel even when operated as part of a wide-area SMR system.

33. The FCC recognizes this regulatory inequality. FNPR ¶ 29-34. However, it also notes that revisions to its wide-area SMR licensing procedures must minimize disruption to other segments of the SMR industry. AMTA agrees. An appropriate balance must be achieved between these system types in an allocation already intensively populated by both. This further complicates formulation of an industry-wide consensus on wide-area SMR licensing rules.

34. The FNPR suggests that the FCC's previous proposal on this subject, its EMSP Notice which emerged from AMTA's earlier-filed wide-area licensing Blueprint, may no longer be viable. The Notice questions whether there is sufficient remaining 800 MHz spectrum to support MTA-wide, multi-channel licenses, or whether revival of that proposal might actually impede development of this industry segment. FNPR ¶ 32.

35. The Commission's query is understandable. The evolution of 800 MHz

SMR wide-area licensing has been substantial, even in the limited amount of time since the Blueprint proposal was filed. Yet AMTA is not persuaded that the Blueprint model is no longer useful. Revisions would be necessary in light of intervening developments. However, to the extent that the Blueprint and EMSP Notice were predicated on implementation of a geographic licensing scheme throughout an MTA, the Association is prepared to re-evaluate those proposals to determine whether they can be modified to satisfy current marketplace realities. AMTA also understands that individual members may be proposing alternative approaches. The Association is eager to consider any such recommendations, and to work with the industry and the FCC to identify the optimal wide-area SMR licensing structure.

36. In addition, there are certain technical/operational rules which should be examined as they apply to wide-area SMR systems. For example, unlike traditional analog systems, AMTA does not recommend any changes in the co-channel separation criteria for these systems. The migration of their operations from high-power, high antenna height to low-power and antenna height facilities is well suited to the current co-channel separation criteria which permit a combination of both types of facilities. The same is not true for the rules regarding station identification. In conjunction with a conversion to geographic licensing, the FCC should adopt station identification rules which parallel those applicable to cellular. Wide-area licensees should be assigned a single call sign for identification purposes.

VI. 900 MHz SMR SERVICE

37. AMTA supports the Commission's proposed completion of the 900 MHz

wide-area licensing process, begun several years ago.[10/] Licensees in this frequency band have been developing new technology and providing innovative services to their customers for some time; however, they remain hampered by regulatory limitations which no longer serve the best interests of the public.

38. While AMTA agrees with the Commission's finding that occupancy of 900 MHz SMR spectrum is not as advanced as that at 800 MHz, FNPR § 34, the Association urges the Commission to recognize the needs of existing licensees before accepting applications from new entities. AMTA respectfully requests that the Commission complete the 900 MHz licensing process by establishing an MTA-based wide-area licensing framework, allowing existing licensees to expand their systems throughout that area before competitive bidding commences on remaining spectrum.

39. AMTA submits that the most effective means of licensing 900 MHz wide-area systems is by MTAs. This approach was advocated by RAM Mobile Data USA Limited Partnership ("RAM"), an existing 900 MHz licensee, and was incorporated by the FCC as part of its 900 MHz Phase II proceeding. 900 MHz Phase II Notice § 17.

40. Under RAM's proposal, existing licensees would be allowed to enlarge their systems from the Designated Filing Areas ("DFAs") establishes in the Commission's 1986 Public Notice in this proceeding,[11/] to "Expansion Areas" corresponding to the 47 MTAs. AMTA supported this portion of RAM's proposal in its

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[10/] See First Report and Order and Further Notice of Proposed Rule Making, PR Docket No. 89-553, 8 FCC Rcd 1469 (1993) ("900 MHz Phase II Notice").

[11/] Private Land Mobile Application Procedures for Spectrum in the 896-901 MHz and 935-940 MHz Bands, 1 FCC Rcd 543 (1986).

comments on the 900 MHz Phase II Notice.[12/] AMTA continues to believe that licensing by MTAs is the best means of producing the "technological innovation and competitive communications marketplace desired by both the FCC and industry, and deserved by the radio-using public."[13/]

41. By contrast, AMTA submits that nationwide 900 MHz licensing is no longer a viable alternative. While significant portions of 900 MHz spectrum remain unused in various portions of the country, available channel blocs in the major urban centers have been licensed, and operators have been providing service for some time. Thus, a "nationwide" licensee would be unable to develop its 900 MHz system in the most desirable markets in the country.

42. In the 900 MHz Phase II Notice, the Commission noted that RAM's modified-MTA proposal "would be a more direct outgrowth of the first licensing phase." 900 MHz Phase II Notice § 17. Indeed, MTAs do represent the natural expansion of DFAs, since MTAs consist of the commercial service areas of each major urban center. AMTA submits that both new and existing 900 MHz licensees could develop competitive systems on an MTA-wide basis using the spectrum which so far remains unlicensed.

43. As the Commission is aware, the limited licensing of 900 MHz Phase I has been in place far longer than was expected. However, some existing 900 MHz licensees have developed new technologies and introduced innovative services despite their limited authorized coverage areas. To better meet their customer's needs, they have

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[12/] AMTA Comments, filed April 23, 1993.

[13/] Id.

also assumed substantial business risk by constructing unprotected secondary sites outside the DFA boundaries.

44. The FCC has recognized the investment of these licensees, and has already proposed that existing secondary systems be converted to primary status. 900 MHz Phase II Notice §§ 45-6. AMTA continues to support the FCC's proposal. The Association also restates its recommendation that all existing 900 MHz licensees be provided the opportunity to expand their systems to the boundaries they would have requested but for the artificial DFA limitations.[14/]

45. AMTA respectfully submits that failure to grant additional authorization to existing licensees would effectively penalize them for investing large amounts of time and money in developing new services and providing these services to the public. Having developed 900 MHz services, existing licensees would be placed at a significant competitive disadvantage if forced to compete with new licensees holding MTA-wide authorizations, while their own licenses were limited to restrictive DFAs. AMTA urges the Commission to grant single, contiguous, MTA-based wide-area authorizations to those existing licensees with a significant presence in each MTA; the remaining 900 MHz SMR spectrum would then be available to new service providers through the Commission's competitive bidding process.

VII. 220 MHz COMMERCIAL SERVICE

46. Like 900 MHz SMR, the licensing process for 220-222 MHz began some

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[14/] Id.

years ago, and is not yet complete. This band has had a particularly difficult development period. There was a long allocation process culminating in a large-scale lottery, and subsequent delays due to court challenges to the FCC's application procedures.[15/] Here, as with 900 MHz, AMTA believes the Commission has an opportunity to create a regulatory framework which can encourage the development of new communications services in an industry's formative stages.

47. AMTA's comments on 220 MHz services focus on four issues which the Association considers vital to the future success of this service: 1) 220 MHz is not substantially similar to any common carrier service; 2) existing 220 MHz licensees must be provided symmetry in regulation; 3) existing 220 MHz licensees must be allowed to modify their license parameters before new licenses are awarded; and 4) regional licensing of 220 MHz channels should be structured to promote rapid commencement of service to the public and vigorous competition among licensees.

A. 220 MHz Is Not Substantially Similar to Part 22 Services

48. In the FNPR, the FCC seeks comment on whether 220 MHz services can be considered substantially similar to any Part 22 service. FNPR ¶ 17. The Commission notes that most systems in this band have not yet been constructed, making it difficult to determine what types of service will be offered; moreover, only 2 MHz is allocated. However, the FNPR also asks whether 220 MHz services are likely to compete with two-way services such as those to be provided by narrowband PCS. Id.

49. For several reasons, AMTA submits that 220 MHz is not comparable to

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[15/] See Evans v. FCC, Case No. 92-1317 (D.C. Cir., dismissed March 18, 1994).